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I. Introduction

A. In General

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Research References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 1 to 3

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§ 1. Generally; definition of “administrative law”

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West’s Key Number Digest

West’s Key Number Digest, Administrative Law and Procedure 1, 2.1

Administrative law is concerned with the legal problems arising out of the existence of agencies which combine in a single entity legislative, executive, and judicial powers.[1] Acts necessary to carry out legislative policies and purposes already declared by the legislature are administrative.[2]

Observation:

The identifying badge of a modern administrative agency is the combination of judicial power (adjudication) with legislative power (rulemaking); however, agencies report to and draw their funds from the legislative body, the executive branch appoints the personnel of the agency, and the residual power of checks resides with the judiciary.[3]

Footnotes

1 Mitchell v. Wright, 154 F.2d 924 (C.C.A. 5th Cir. 1946); Handlon v. Town of Belleville, 4 N.J. 99, 71 A.2d 624, 16 A.L.R.2d 1118 (1950); Floyd v. Department of Labor and Industries, 44 Wash. 2d 560, 269 P.2d 563 (1954).

2 State ex rel. Woods v. Block, 189 Ariz. 269, 942 P.2d 428 (1997).

3 McNeil-Terry v. Roling, 142 S.W.3d 828 (Mo. Ct. App. E.D. 2004).

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§ 2. Concern with private and public rights

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West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 2.1, 3

Because administrative agencies serve in part to effectuate the constitutional obligation of the executive branch to see that the laws are faithfully executed, the public interest is an added dimension in every administrative proceeding.[1]While sometimes the language of "private rights" is used in the administrative context, this language may simply signify a policy relevant to administrative law encompassing both public and private rights.[2]

In essence, the public-rights doctrine reflects a pragmatic understanding that when Congress selects a quasi-judicial or administrative method of resolving matters that could be conclusively determined by the executive and legislative branches, the danger of encroaching on the judicial powers is less than when private rights which are normally within the purview of the judiciary are relegated as an initial matter to administrative adjudication.[3]Where private, common-law rights are at stake, the courts' examination of the congressional attempt to control the manner in which those rights are adjudicated will be searching.[4]However, Congress may create a private right that is so closely integrated with a public regulatory scheme as to be a matter for agency resolution with limited involvement by the federal judiciary.[5]These separation-of-powers concerns are diminished where parties are not required to but merely have the option of proceeding in an administrative forum.[6]In addition, when an agency refuses to act, it generally does not exercise its coercive power over an individual's liberty or property rights and thus does not infringe upon areas that courts often are called upon to protect.[7]

Footnotes

1 City of Hackensack v. Winner, 82 N.J. 1, 410 A.2d 1146 (1980).

2 In re St. Joseph Lead Co., 352 S.W.2d 656 (Mo. 1961).

3 Commodity Futures Trading Com'n v. Schor, 478 U.S. 833, 106 S. Ct. 3245, 92 L. Ed. 2d 675 (1986); Thomas v. Union Carbide Agr. Products Co., 473 U.S. 568, 105 S. Ct. 3325, 87 L. Ed. 2d 409 (1985).

[4] Commodity Futures Trading Com'n v. Schor, 478 U.S. 833, 106 S. Ct. 3245, 92 L. Ed. 2d 675 (1986).

[5] Thomas v. Union Carbide Agr. Products Co., 473 U.S. 568, 105 S. Ct. 3325, 87 L. Ed. 2d 409 (1985).

[6] Commodity Futures Trading Com'n v. Schor, 478 U.S. 833, 106 S. Ct. 3245, 92 L. Ed. 2d 675 (1986).
As to the separation of powers of government in this context, see §§ 59 to 61.

[7] Heckler v. Chaney, 470 U.S. 821, 105 S. Ct. 1649, 84 L. Ed. 2d 714 (1985).

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§ 3. Relation of administrative process to legal process

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West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 2.1

Administrative agencies belong to a different branch of government than judicial courts. They are separately created and exercise executive power in administering legislative authority delegated to them by statute.[1]An important goal of any administrative scheme is to guarantee the rationality of the process through which results are determined.[2]The administrative system substitutes administrative agencies for courts in making many determinations in the establishment and definition of individual rights.[3]

Administrative procedure is generally simpler, less formal, and less technical than judicial procedure.[4]For instance, strict rules of evidence generally do not apply to administrative proceedings.[5]In addition, the right to a jury trial in suits at common law preserved by the Seventh Amendment to the United States Constitution is generally inapplicable in administrative proceedings.[6]

Footnotes

1 City of Hackensack v. Winner, 82 N.J. 1, 410 A.2d 1146 (1980).
As to administrative agencies, generally, see §§ 20 to 30.

2 State ex rel. K.M. v. West Virginia Dept. of Health and Human Resources, 212 W. Va. 783, 575 S.E.2d 393 (2002).

3 Federal Trade Com'n v. National Lead Co., 352 U.S. 419, 77 S. Ct. 502, 1 L. Ed. 2d 438 (1957); Benedict v. Board of Police Pension Fund Com'rs of Seattle, 35 Wash. 2d 465, 214 P.2d 171, 27 A.L.R.2d 992 (1950).

4 Foley v. Metropolitan Sanitary Dist. of Greater Chicago, 213 Ill. App. 3d 344, 157 Ill. Dec. 514, 572 N.E.2d 978 (1st Dist. 1991); Ruffin v. City of Clinton, 849 S.W.2d 108 (Mo. Ct. App. W.D. 1993).

5 § 332.

[6] Pernell v. Southall Realty, 416 U.S. 363, 94 S. Ct. 1723, 40 L. Ed. 2d 198 (1974).

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§ 4. Advantages of administrative process

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West's Key Number Digest

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One of the purposes of administrative remedies is to enable parties to resolve their disputes in a less cumbersome and less expensive manner than is normally encountered at a trial in court.[1] Administrative proceedings operate to the advantage not only of the litigants but also of the courts which are thereby relieved of some matters on their dockets.[2]

In addition, by the administrative device, advantages are gained which are not procurable by the judicial process, including preventive action and decisions which persons can procure in advance of action.[3] The constant process of trial and error, on a wider and fuller scale than a single adversary litigation permits, differentiates perhaps more than anything else the administrative from the judicial process.[4]

Footnotes

1 Buras v. Board of Trustees of Police Pension Fund of City of New Orleans, 367 So. 2d 849 (La. 1979).

2 Buras v. Board of Trustees of Police Pension Fund of City of New Orleans, 360 So. 2d 572 (La. Ct. App. 4th Cir. 1978), writ granted, 363 So. 2d 534 (La. 1978) and judgment rev'd on other grounds, 367 So. 2d 849 (La. 1979).

3 Guiseppi v. Walling, 144 F.2d 608, 155 A.L.R. 761 (C.C.A. 2d Cir. 1944), judgment aff'd, 324 U.S. 244, 65 S. Ct. 605, 89 L. Ed. 921 (1945).

4 N.L.R.B. v. Seven-Up Bottling Co. of Miami, 344 U.S. 344, 73 S. Ct. 287, 97 L. Ed. 377 (1953).

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§ 5. Collaboration of administrative agencies and courts

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West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 1, 2.1

Despite the differences between the administrative and judicial processes, they are to be deemed collaborative instrumentalities of justice.[1]Collaboration of judicial power and function with the administrative process is a necessary part of today's legal system.[2]Courts, in actions brought before them, may call to their aid the appropriate administrative agency on questions within its administrative competence.[3]

Many statutes in regulating economic enterprise have divided the duty of enforcement between courts and administrative agencies. However, there is the greatest variety in the manner in which this responsibility is distributed; under some statutes, the administrative process is teamed with the judicial process and the authority of the court and agency is intertwined,[4]and in some instances, an administrative finding is a statutory prerequisite to the bringing of a lawsuit.[5]

Footnotes

1 U.S. v. Ruzicka, 329 U.S. 287, 67 S. Ct. 207, 91 L. Ed. 290 (1946); S.S.W., Inc. v. Air Transport Ass'n of America, 191 F.2d 658 (D.C. Cir. 1951).

2 Walling v. Benson, 137 F.2d 501, 149 A.L.R. 186 (C.C.A. 8th Cir. 1943).

3 Federal Trade Commission v. Cement Institute, 333 U.S. 683, 68 S. Ct. 793, 92 L. Ed. 1010 (1948).

4 U.S. v. Ruzicka, 329 U.S. 287, 67 S. Ct. 207, 91 L. Ed. 290 (1946).

5 Ewing v. Mytinger & Casselberry, 339 U.S. 594, 70 S. Ct. 870, 94 L. Ed. 1088 (1950).

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§ 6. Role of Attorney General in advising administrative agencies

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West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 1, 2.1

Treatises and Practice Aids

As to duties of the attorney general, generally, see Federal Procedure, L. Ed., Administrative Procedure [Westlaw®: Search Query]

Pursuant to federal statute, the head of an executive department may require the opinion of the Attorney General of the United States on questions of law arising in the administration of that executive department.[1] While the opinion of the Attorney General of the United States does not control a court in the construction of an act,[2] it may have a controlling influence in some instances.[3]

With regard to state law, while it may be persuasive, an attorney general opinion is neither conclusive nor binding, and the recipient of it is free to follow it or not as he or she chooses.[4] Otherwise, any executive office could be controlled by the opinion of the attorney general specifying what the law requires to be done in that office.[5]

Footnotes

1 28 U.S.C.A. § 512.
As to the powers, duties, and liabilities of the U.S. Attorney General, see Am. Jur. 2d, Attorney General §§ 45 to 53.

2 Lewis Pub. Co. v. Morgan, 229 U.S. 288, 33 S. Ct. 867, 57 L. Ed. 1190 (1913); Pueblo of Taos v. Andrus, 475 F. Supp. 359 (D.D.C. 1979).

[3] U.S. Bedding Co. v. U.S., 55 Ct. Cl. 459, 1920 WL 656 (1920).

[4] League of United Latin American Citizens, Council No. 4434 v. Clements, 999 F.2d 831, 26 Fed. R. Serv. 3d 1379 (5th Cir. 1993) (rejected on other grounds by, U.S. v. Charleston County, S.C., 365 F.3d 341 (4th Cir. 2004)) (applying Texas law); Frazier v. State By and Through Pittman, 504 So. 2d 675, 39 Ed. Law Rep. 417 (Miss. 1987); Follmer v. State, 94 Neb. 217, 142 N.W. 908 (1913).

[5] Follmer v. State, 94 Neb. 217, 142 N.W. 908 (1913).

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§ 7. Role of Attorney General in advising administrative agencies—Provision of legal services

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West's Key Number Digest, Administrative Law and Procedure 1, 2.1

Under federal law, when, in the opinion of the head of an executive department or agency, the interests of the United States require the service of counsel on the examination of any witness concerning any claim, or on the legal investigation of any claim, pending in the department or agency, he or she will notify the Attorney General. The notification must give the Attorney General all the facts necessary to enable him or her to furnish proper professional service in attending the examination or making the investigation, and the Attorney General will provide for that service.[1]

Footnotes

[1] 28 U.S.C.A. § 514.

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§ 8. Administrative Conference of United States

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West's Key Number Digest, Administrative Law and Procedure 1, 2.1

The Administrative Conference Act establishes the Administrative Conference of the United States.[1] The purposes of the Act are:[2]

(1) to provide suitable arrangements through which federal agencies, assisted by outside experts, may cooperatively study mutual problems, exchange information, and develop recommendations for action by proper authorities to the end that private rights may be fully protected and regulatory activities and other federal responsibilities may be carried out expeditiously in the public interest;

(2) to promote more effective public participation and efficiency in the rulemaking process;

(3) to reduce unnecessary litigation in the regulatory process;

(4) to improve the use of science in the regulatory process; and

(5) to improve the effectiveness of laws applicable to the regulatory process.

To carry out its stated purposes, the Administrative Conference is empowered to:[3]

(1) study the efficiency, adequacy, and fairness of the administrative procedure used by administrative agencies in carrying out their programs, and make appropriate recommendations to the agencies, the President, Congress, or the Judicial Conference of the United States;

(2) arrange for interchange among agencies of information potentially useful in improving administrative procedure;

(3) collect information and statistics from agencies and publish such reports as it considers useful for evaluating and improving administrative procedure;

(4) enter into arrangements with any administrative agency or major organizational unit within an agency pursuant to which the Conference performs any of the prescribed functions; and

(5) provide assistance in response to requests relating to the improvement of administrative procedure in foreign countries, subject to the concurrence of the Secretary of State, the Administrator of the Agency for International Development, or the Director of the United States Information Agency, as appropriate, except that such assistance will be limited to the analysis of issues relating to administrative procedure, the provision of training of foreign officials in administrative procedure, and the design or improvement of administrative procedure, where the expertise of members of the Conference is indicated; and such assistance may only be undertaken on a fully reimbursable basis, including all direct and indirect administrative costs.

Footnotes

[1] 5 U.S.C.A. §§ 591 to 596.

[2] 5 U.S.C.A. § 591.

[3] 5 U.S.C.A. § 594.

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§ 9. Administrative Conference of United States—Membership

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West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 1, 2.1

The Administrative Conference is composed of not more than 101 nor less than 75 appointed members.[1] The Conference is composed of:[2]

(1) a full-time chairman, appointed for a five-year term by the President with the advice and consent of the Senate;

(2) the chairman of each independent regulatory board or commission, or an individual designated by the board or commission;

(3) the head of each executive department or other administrative agency which is designated by the President, or an individual designated by the head;

(4) one or more appointees from a board, commission, department, or agency as designated by the head thereof with the approval of the board or commission;

(5) individuals appointed by the President to membership on the Council who are not otherwise members of the Conference; and

(6) not more than 40 other members appointed for two-year terms by the chairman, with the approval of the Council, such as members of the practicing bar, scholars in the field of administrative law or government, or others specially knowledgeable or experienced in federal administrative procedure.

Members of the Conference, except the chairman, are not entitled to pay for service. However, members appointed from outside the federal government are entitled to travel expenses, including per diem instead of subsistence.[3]

Footnotes

[1] 5 U.S.C.A. § 593(a).

[2] 5 U.S.C.A. § 593(b).

[3] 5 U.S.C.A. § 593(c).

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§ 10. Administrative Conference of United States—Organization

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West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 1, 2.1

The Administrative Conference is organized into three parts:
(1) the chairman, who is the Conference's chief executive and reports to the President and the Congress;[1]

(2) an 11-member Council which calls the Conference into session, proposes bylaws and regulations, and makes recommendations;[2] and
(3) the Conference itself, constituting the Assembly of the Conference, which adopts recommendations, bylaws, and regulations.[3]

Footnotes

1 5 U.S.C.A. § 595(c).

2 5 U.S.C.A. § 595(b).

3 5 U.S.C.A. § 595(a).